

KEEGAN, WERLIN & PABIAN, LLP

ATTORNEYS AT LAW  
21 CUSTOM HOUSE STREET  
BOSTON, MASSACHUSETTS 02110-3525

(617) 951-1400

TELECOPIERS:  
(617) 951-1354  
(617) 951-0586

DAVID S. ROSENZWEIG  
E-mail: drosen@kwplaw.com

February 12, 2002

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

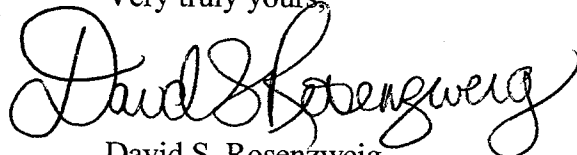
Re: Franklin W. Olin College of Engineering, D.T.E. 01-95

Dear Ms. Cottrell:

I have enclosed an original and nine (9) copies of the Motion of Boston Edison Company, d/b/a NSTAR Electric, to Join Babson College as a Party In This Proceeding.

I have also enclosed a Certificate of Service. Thank you for your attention to this matter.

Very truly yours,



David S. Rosenzweig

Enclosures

cc: Robert Hayden, Hearing Officer  
Paul Afonso, General Counsel  
Ronald LeComte, Director, Electric Power Division  
William Stowe, Esq.  
Eric Krathwohl, Esq.  
Kenneth Barna, Esq.  
Brian M. Barefoot, President, Babson College

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**COMMONWEALTH OF MASSACHUSETTS**

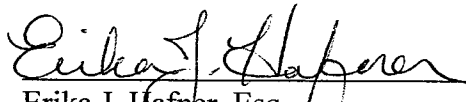
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Franklin W. Olin College of Engineering  
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D.T.E. 01-95

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing document upon the Department of Telecommunications and Energy, and counsel for all parties, by hand or first class mail, in accordance with the requirements of 220 C.M.R. 1.05 (the Department's rules of Practice and Procedure).

  
\_\_\_\_\_  
Erika J. Hafner, Esq.  
Keegan, Werlin & Pabian, LLP  
21 Custom House Street  
Boston, MA 02110  
(617) 951-1400

Dated: February 12, 2002

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Petition of Franklin W. Olin College of Engineering

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D.T.E. 01-95

**MOTION OF BOSTON EDISON COMPANY, d/b/a NSTAR ELECTRIC, TO  
JOIN BABSON COLLEGE AS A PARTY IN THIS PROCEEDING**

Now comes Boston Edison Company, d/b/a NSTAR Electric (“Boston Edison” or the “Company”), requesting that the Department of Telecommunications and Energy (the “Department”) join Babson College (“Babson”) as a party to this proceeding. Babson is a necessary party in that complete relief cannot be granted without its participation. As stated below, Babson is acting as a “middleman” between Franklin W. Olin College of Engineering (“Olin”) and Wellesley Municipal Light Plant (“WMLP”), which makes Babson an indispensable party in the adjudication of this matter. More importantly, Babson is illegally providing electricity and distribution service to Olin without Department authorization and is violating Boston Edison’s exclusive franchise rights under Chapter 164. Accordingly, the Company requests that the Department join Babson as a party to this proceeding.<sup>1</sup>

Through the discovery process, Boston Edison has learned that Olin owns a tiny patch of property in the Town of Wellesley (“Wellesley”), which it purchased from Babson immediately prior to filing its Petition with the Department (Response to Information Request BE-1-4, Attachment BE-1-4). Currently, Babson is providing Olin with electricity and distribution service as part of a general accommodation agreement

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<sup>1</sup> Babson’s contact information is: Brian M. Barefoot, President, Babson College, Babson Park, Wellesley, Massachusetts 02457-0310.

between the two colleges (Response to Information Request BE-1-7C). Babson receives its service from WMLP pursuant to WMLP's "Large General Service Primary" tariff (Response to Information Request BE-1-8, Attachment BE-1-8A), which prohibits the resale of electricity.

There is no explicit provision in the Department's regulations regarding the joinder of necessary parties. However, the Department's regulations reference the Massachusetts Rules of Civil Procedure as instructive in making determinations on various issues. See 220 C.M.R. 1.06(6)(c). The Massachusetts Rule of Civil Procedure regarding the joinder of necessary parties provides that a person "shall be joined as a party in [an] action if ... in his absence complete relief cannot be accorded among those already parties." Mass. R. Civ. P. 19(a).<sup>2</sup>

## **I. ARGUMENT**

It is apparent that Babson is playing a central role in the underlying dispute in this case, in that Babson is now providing electricity and distribution service to Olin. This provision of service violates several provisions of Chapter 164 and places Babson under the Department's jurisdiction. In addition, by providing service to Olin, Babson is currently in violation of the tariff under which it receives electric service from WMLP.

### **A. Babson Has a Central Role in This Dispute Between Boston Edison, Olin and WMLP and Is Necessary for the Resolution of This Matter.**

As discovery has proceeded in this case, it has become clear that Babson has information critical to the resolution of this matter, which has not been provided by Olin or WMLP (and/or may not be available to them). For example, WMLP has resisted

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<sup>2</sup> To the extent that the Department prefers, Boston Edison could alternatively file a petition requesting the Department to initiate an investigation against Babson for its violations of Chapter 164 and to consolidate that proceeding with the current docket.

releasing Babson's electric bills without Babson's consent (see Response to Information Request BE-2-12), so Boston Edison cannot estimate the amount of load increase experienced by Babson as a result of adding Olin to its distribution system. In addition, WMLP claims it is unable to describe the specific details of the temporary service existing between Olin and Babson (see Responses to Information Request BE-2-23; BE-2-31; BE-2-32; BE-2-33). Similarly, to date Olin has not provided: (1) information regarding the details of Babson's campus sought by the Company (see Response to Information Request BE-1-32); or (2) information regarding Olin's electricity demand because, Olin alleges, Babson does not specifically bill Olin for such service (see Response to Information Request BE-1-14). Accordingly, to develop a complete and accurate record in this case, Babson must be made a party.

In addition, as a result of Babson's role as the intermediary between WMLP and Olin, both WMLP and Olin have argued that they are not in violation of the law. For example, based on Babson's interceding role, WMLP has asserted that it is only serving a current customer (i.e., Babson), and therefore, WMLP is not in violation of G.L. c. 164, § 47A(b) (see WMLP Opposition at 1-2; Response to Information Request BE-2-11). Also, as discussed above, because WMLP is not serving Olin directly, WMLP denies having specific knowledge of Babson's distribution equipment and the nature of any arrangements between Babson and Olin (Responses to Information Requests BE-2-19; BE-2-23; BE-2-24; BE-2-31). Olin similarly uses Babson's nebulous role in this matter to argue that it is not taking service from WMLP in violation of G.L. c. 164,

§§ 1B(a), 47A(b), because Olin is not directly taking service from WMLP (Response to Information Requests BE-1-14; BE-1-38).<sup>3</sup>

There are important informational gaps in this record without the participation of Babson, and the true nature of Babson's role in this dispute must be ascertained to provide complete relief to Boston Edison; therefore, Babson should be joined as a party to this case.

**B. Babson's Provision of Service to Olin Brings It Under the Purview of Chapter 164 and the Authority of the Department.**

Babson's provision of service to Olin constitutes the "distribution" of electricity. See G.L. c. 164, § 1. The statutory definition of "distribution" is "the delivery of electricity over lines which shall operate at a voltage level typically equal to or greater than 110 volts and less than 69,000 volts to an end-use customer within the [C]ommonwealth." Id. Importantly, "[t]he distribution of electricity shall be subject to the jurisdiction of the [D]epartment." Id. Babson currently uses a 13.8 kilovolt distribution system to serve Olin, and this rating certainly falls within the statutory definition of "distribution" (Response to Information Request BE-1-5, Attachment BE-1-5A). In addition, a "distribution company" is defined as "a company engaging in the distribution of electricity or owning operating, or controlling distribution facilities." G.L. c. 164, § 1. Clearly, Babson is currently distributing electricity to a third party, Olin,<sup>4</sup> and it owns, operates and controls distribution facilities (see Response to

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<sup>3</sup> Without Babson's participation in this proceeding, there is the risk that the answer to many key questions will be deflected by Olin or WMLP to Babson, whose absence will result in a material void in the record.

<sup>4</sup> Although the current service provided to Olin is labeled by Olin and WMLP as "temporary," this is an unimportant distinction because the relevant section does not differentiate between temporary and permanent distribution service. See G.L. c. 164, § 1.

Information Request BE-1-5, Attachment BE-1-5A). Thus, pursuant to the above-referenced definitions, Babson is a distribution company engaged in the distribution of electricity to Olin and, therefore, is subject to Department jurisdiction.<sup>5</sup>

**C. Babson's Provision of Service to Olin Is in Violation of the WMLP Tariff Under Which Babson Receives Its Service.**

Olin claims that Babson is currently receiving distribution service from WMLP and then providing that service to Olin as an "accommodation" (see Response to Information Request BE-1-7, Attachment BE-1-7C). However, there is an explicit provision in WMLP's "Large General Service Primary" tariff, under which Babson receives service, that states: "This rate schedule is not available where any portion of the electric power and energy purchased from the WMLP is resold" (Response to Information Request BE-1-8, Attachment BE-1-8A). Because Babson is providing the distribution service pursuant to the accommodation agreement between Olin and Babson (see Response to Information Request BE-1-7, Attachment BE-1-7A), where collaboration between the two colleges is described as a mutual benefit and goal (see Response to Information Request BE-1-7, Attachment BE-1-7C at 1), there is consideration being exchanged between Babson and Olin, and Babson is therefore selling distribution service to Olin.<sup>6</sup> Thus, Babson's actions are in conflict with WMLP's tariff and it is acting as a distribution company without the Department's approval in violation of Chapter 164.

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<sup>5</sup> Insofar as Babson is engaging in the sale of electricity to Olin, it would also be an "electric company" pursuant to G.L. c. 164, §§ 1, 2.

<sup>6</sup> It is important to note that, although Boston Edison believes Babson is engaging in the sale of electricity under chapter 164, the definitions of "distribution," "distribution company" and "distribution service" make no reference to a sale occurring. See G.L. c. 164, § 1. Therefore, regardless of the presence or absence of a sale, Babson has engaged in distribution activities with a third party placing it subject to the Department's jurisdiction.

## **II. CONCLUSION**

Based on its significant role in the underlying dispute, Babson is subject to the Department's jurisdiction and it is an entity necessary for the just adjudication of the current proceeding by the Department. See Mass. R. Civ. P. 19(a). Where Babson is acting as an essential intermediary between WMLP and Olin, it is necessary to join Babson in order to provide complete relief. Accordingly, the Company respectfully requests that the Department join Babson as a party to this proceeding.